

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

MFA.No. 631 of 2000(A)

IC.3/1998 of EMPLOYEES INSURANCE COURT, PALAKKAD

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APPELLANT: (OPPOSITE PARTY)

**THE REGIONAL DIRECTOR, EMPLOYEES STATE
INSURANCE CORPORATION, THRISSUR.**

BY ADV. SRI.T.P.M.IBRAHIM KHAN

RESPONDENT: (APPLICANT)

**GENERAL MANAGER, GRAMALAKSHMI
MUDRALAYAM, KANJIKODE, PALAKKAD.**

**THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION
ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 631 of 2000

JUDGMENT

Koshy, J.

E.S.I.Corporation is challenging the order of the Insurance Court, setting aside an order imposing damages on the respondent. The respondent is a printing press owned by the Kerala Rural Employment and Welfare Society, a non-profit making institution and the share holders of the Society are Government and local bodies situated in the State of Kerala. The respondent submitted an application for exemption from the ESI Act and it did not pay the contribution for the period from 1.10.1989 to 31.3.1991 hoping that they will get exemption from the Government. But, exemption was refused. They paid the entire amount with interest. The ESI Corporation, thus, got the entire employers and employees contributions with interest without paying any benefit. Thereafter, in 1997, the ESI

Corporation issued a notice on the respondent for imposing damages for the delayed payment of contribution. The Tribunal found that imposition of damages is in the nature of imposition of penalty and unless mens rea is there, damages cannot be imposed. The Tribunal also found that non-payment of contribution in time is a bona fide action and thereafter the entire amounts were paid and this is not a case where damages can be imposed. It further found that notice for imposition of damages was issued after five years of the period in question and it is time barred. On the facts and circumstances of the case, we are of the view that no interference is required in the order.

The appeal is, therefore, dismissed.

(J.B.Koshy, Judge)

25th May, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.631 of 2000

JUDGMENT

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